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DIRECTOR'S OFFICE
TECHNOLOGY CENTER 3600

In re Application of Peter Benda et al.
Appl. No. 09/751,144
Filed: December 29, 2000
For: TRANSPORT VEHICLE CAPACITY
MAXIMIZATION LOGISTICS SYSTEM
AND METHOD OF SAME

RESPONSE TO PETITION
UNDER 37 CFR 1.59

This is a response to the petition under 37 CFR 1.59(b), filed September 24, 2003, to expunge information from the above identified application.

The decision on the petition will be held in abeyance until allowance of the application or mailing of an *Ex parte Quayle* action or a Notice of Abandonment, at which time the petition will be decided.

Petitioner requests that documents entitled "IBM Continuous Replenishment Service Executive Overview", "IBM, RFP Response to ABC Company, 9/19/00," and "IBM, Continuous Replenishment Service, Executive Overview, IBM Supply Chain Solutions, 1997" be expunged from the record. Petitioner states either: (A) that the information contains trade secret material, proprietary material and/or material that is subject to a protective order which has not been made public; or (B) that the information submitted was unintentionally submitted and the failure to obtain its return would cause irreparable harm to the party who submitted the information or to the party in interest on whose behalf the information was submitted, and the information has not otherwise been made public. The petition fee set forth in 37 CFR 1.17(h) has been paid.

The decision on the petition is held in abeyance because prosecution on the merits is not closed. Accordingly, it is not appropriate to make a final determination of whether or not the material requested to be expunged is "material," with "materiality" being defined as any information which the examiner considers as being important to a determination of patentability of the claims. Thus, the decision on the petition to expunge must be held in abeyance at this time.

During prosecution on the merits, the examiner will determine whether or not the identified document is considered to be "material." If the information is not considered by the examiner to be material, the information will be returned to applicants.

This application will be forwarded to the examiner for prompt examination.



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